

REMARKS

Claims 42, 43, 45 – 52, and 54 – 57 are presented for reconsideration and further examination in view of the foregoing amendments and following remarks. Claims 1 – 41 are withdrawn, and claims 44 and 53 were previously cancelled without prejudice or disclaimer.

In the outstanding Office Action, the Examiner rejected claims 42, 43, 45 – 52, 54, 55, and 58 under 35 U.S.C. 103 as being unpatentable over U.S. Patent No. 5,517,021 to Kaufman et al. (hereinafter referred to as “Kaufman”) in view of U.S. Patent Application Publication No. 2001/0049480 to John (hereinafter referred to as “John”); and rejected claims 56 and 57 under 35 U.S.C. 103(a) as being unpatentable over Kaufman in view of U.S. Patent No. 6,629,935 to Miller et al. (hereinafter referred to as “Miller”). In response, Applicants traverse the Examiner’s rejections. No new matter has been added to this application.

Rejections under 35 U.S.C. §103

The Examiner rejected claims 42, 43, 45 – 52, 54, 55, and 58 as being obvious over Kauffman in view of John, and rejected claims 56 and 57 under 35 U.S.C. 103(a) as being unpatentable over Kaufman in view of Miller.

By this Response and Amendment, Applicants respectfully traverse the Examiner’s rejection since the cited prior art does not disclose, teach or suggest all of the features of independent Claim 42, and thus of all claims remaining in the application dependent thereon. To establish a *prima facie* case of obviousness, the Examiner must show that the prior art references teach or suggest all of the claim features. *Amgen, Inc. v. Chugai Pharm. Co.*, 18 USPQ2d 1016, 1023 (Fed. Cir. 1991); *In re Fine*, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988); *In re Wilson*, 165 USPQ 494, 496 (CCPA 1970).

In contrast to the presently claimed subject matter, the cited prior art references do not disclose, teach or suggest that a “computer processor is further programmed, upon stopping a collection of data after receiving said indication that the data collected is reliable, to determine if said data passes a scattering check” as recited in the present claims. This feature has not been shown to be present in the prior art. The Examiner cited column 6, lines 50 – 61, column, 10, line 66 – column 11, line 16 and column 13, lines 6 – 9 of Kauffman as disclosing a scatter check feature. However, these passages do not refer to a scatter check feature as disclosed in the present application at page 13, line 10 through page 14, line 24. Rather, these passages of Kauffman refer only to estimating the mode of collected samples, i.e., probability distribution. None of the cited prior art references indicates that bad data will be eliminated as a result of its determination of probability distribution nor do any of the cited prior art references indicate that reliable data will be determined as an alternative result.

As all of the features of the presently claimed subject matter are not disclosed, taught or suggested by the cited prior art, Applicants submit that the cited prior art does not render the presently claimed invention obvious. Accordingly, for at least this reason, Applicants respectfully request that the Examiner reconsider and withdraw the rejection.

CONCLUSION

In light of the foregoing, Applicants submit that the application is now in condition for allowance. If the Examiner believes the application is not in condition for allowance, Applicants respectfully request that the Examiner contact the undersigned attorney if it is believed that such contact will expedite the prosecution of the application.

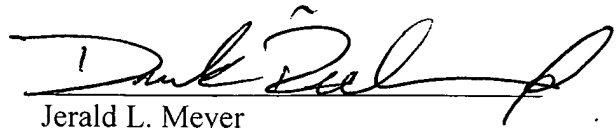
In the event this paper is not timely filed, Applicants petition for an appropriate extension of time. Please charge any fee deficiency or credit any overpayment to Deposit Account No. 14-0112.

Application No. 09/924,265
Attorney Docket No. 26761U

Respectfully submitted,
THE NATH LAW GROUP

Date: October 6, 2008

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A handwritten signature in black ink, appearing to read "Jerald L. Meyer", written over a horizontal line.

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